be several joint wrongdoers.[19] However, there is no good reason for denying a rule, sound in principle, simply because that rule might be abused.[20]

RELINQUISHMENT OF EXPECTANT ESTATE BY HEIR.—There is a diversity of opinion among American courts as to what force is to be attached to a release to the ancestor of an heir's expectancy in consideration of a present advance. It seems clear that such a release should have no effect in law, since only such rights are thereby passed as the releasor has at the time the release is made.[1] It is an elementary principle of common law that no one can be the heir of the living. It would therefore seem that no child should be able to release or quitclaim at law his interest in his parent's estate, since, as he may not be heir, he has nothing to release or quitclaim.[2] However, the effect of this common law rule is modified by the law of advancements and by the interference of equity.[3]

An advancement is an irrevocable gift *in praesenti* of real or personal property to a child by a parent to enable the donee to anticipate his inheritance to the extent of the gift.[4] There is a presumption that a substantial surrender of money or property by a parent to a child is intended to be an advancement chargeable to the child in the distribution of the parent's estate.[5] It is held that a release of all claims against the ancestor's estate, though void as a release, clearly shows an intent to make an advancement.[6] In a few instances, courts of

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[19]Kelly, C. B., in Brinsmead *v.* Harrison, *supra.* This reason would apply equally well in the case of joint and several contracts. Nevertheless, even in England, only full satisfaction bars an obligee from proceeding against joint and several obligors.

[20]See discussion of the English view in Freeman, Judgments (3rd ed.) § 236.

[1]Headrick *v.* McDowell (1903) 102 Va. 124, 43 S. E. 804; Co. Lit. 265: "But here in the case which Littleton puts where the sonne release in the life of his father, this release is void, (*a*) because he hath no right at all at the time of the release made, but all the right was at that time in the father; but after the decease of the father, the sonne shall enter into the land against his own release."

[2]Cass *v.* Brown (1894) 68 N. H. 85, 44 Atl. 86.

[3]But contracts by which the heir attempts to convey to a third party his expectancy are often held to be void both in law and in equity as a fraud on the ancestor, Boynton *v.* Hubbard (1810) 7 Mass. 112, unless made with the ancestor's consent. Fitch *v.* Fitch (1829) 25 Mass. 480; but see Hale *v.* Hollon (1897) 90 Tex. 427, 39 S. W. 287. The fact that the ancestor is insane and incapable of giving his consent does not alter this rule. McClure *v.* Raben (1892) 133 Ind. 507, 33 N. E. 275; *contra,* Hale *v.* Hollon, *supra.*

[4]Asgood *v.* Breed (1821) 17 Mass. 356; see Gary *v.* Newton (1903) 201 Ill. 170, 66 N. E. 267.

[5]Hatch *v.* Straight (1819) 3 Conn. 31; Scott *v.* Scott (1805) 1 Mass. 527; Sanford *v.* Sanford (N. Y. 1872) 61 Barb. 293.

[6]Headrick *v.* McDowell, *supra*; Elliott *v.* Leslie (1907) 124 Ky. 553, 99 S. E. 619; Cannon *v.* Nowell (1859) 51 N. C. 436. But the doctrine of advancements does not apply to cases of unintentional partial intestacy. Needles's Ex'r. *v.* Needles (1857) 7 Oh. St. 432.

law, desirous of giving complete effect to the agreement between the parent and the child, have overreached this presumption and held the payment made in consideration of a deed of release to be an advancement in full, barring the heir under the statutes regulating advancements, though the amount advanced was only part of the grantee's proportionate share of the estate.[7] To justify the holding in the latter cases, the courts have urged that, since a present advance may be advantageous to the heir, he and the parent may agree on a certain sum, the present use of which shall be deemed equivalent to a full distributive share of the estate at the death of the parent. Suffice it to say that this theory finds no support in the law of advancements, which is so strictly confined to the actual sum paid to the heir by the parent that no interest is allowed on the advancement brought into hotchpot.[8]

In equity, however, it seems that, where the intention of the parties is clear, consideration given, and no fraud involved, the renunciation of one's rights as heir should be enforced.[9] The assumption of jurisdiction by equity seems to be on one of two grounds. Where the heir contracts not to assert any claim against the estate of the parent in consideration of the advance, equity will enforce that contract seemingly to avoid circuity of action.[10] In the recent case of *Boyer* v. *Boyer* (Ind. App. 1916) 111 N. E. 952, the court similarly enforced a release by a son of all rights in his father's estate. This decision is in accord with the general rule that the form of the instrument, whether release, receipt in full, covenant, or contract, is immaterial.[11] Equity construes the release, which can have no operation as such, as a contract, in order to carry out the intention of the parties.[12] Secondly, even when not assuming to enforce any contract, the court nevertheless may hold that an heir who accepts and uses an advancement is estopped to deny the validity of the release under which he received it.[13] The estoppel operates with special force if the heir has misled the grantor by fraudulent conduct.[14]

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[7]Quarles *v.* Quarles (1808) 4 Mass. 680; see Power's Appeal (1869) 63 Pa. 443. It may be noted that the courts of Massachusetts and Pennsylvania did not have wide equitable powers, and hence, if in these cases they had not extended the doctrine of advancements, they might have been unable to give full effect to the releases.

[8]Asgood *v.* Breed, *supra.*

[9]Havens *v.* Thompson (1875) 26 N. J. Eq. 383; but see McCall's Adm'r. *v.* Hampton (1895) 98 Ky. 166, 32 S. W. 406; Needles's Ex'r. *v.* Needles, *supra.*

[10]Newsome *v.* Cogburn (1860) 30 Ga. 291; Brown *v.* Brown (1894) 139 Ind. 653, 39 N. E. 152; Bishop *v.* Davenport (1871) 58 Ill. 105; see 2 Story, Equity (13th ed.) § 1040*b*.

[11]See Bishop *v.* Davenport, *supra,* 110.

[12]Professor Pomeroy thinks the implication of a contract unnecessary. He regards such an assignment or release as an equitable assignment of a present possibility, which changes, when the expectancy is realized, into an assignment of equitable ownership. See Pomeroy, Eq. Jur. (3rd ed.) § 1288.

[13]Kershaw *v.* Kershaw (1882) 102 Ill. 307; Gore *v.* Howard (1895) 94 Tenn. 577, 30 S. W. 730; Coffman *v.* Coffman (1895) 41 W. Va. 8, 23 S. E. 523.

[14]Havens *v.* Thompson, *supra*; Gore *v.* Howard, *supra.*

In some states, the assignment of expectancies by prospective heirs is controlled by statute. The California Civil Code provides that an assignment or attempted transfer of such an interest is void.[15] But the courts have interpreted this provision as meaning that the assignment is void only at law, and they have enforced it in equity.[16] By the Civil Code of Louisiana, "the acceptance or renunciation of a succession before the succession is opened or left, is absolutely null and void and can produce no effect."[17] The Louisiana courts apparently give this statute a literal interpretation.[18]

[15]Cal. Civ. Code, § 700, § 1045.

[16]Bridge *v.* Kedon (1912) 163 Cal. 493, 126 Pac. 149.

[17]La. Rev. Civ. Code, Art. 984.

[18]See Jacob's Succession (1901) 104 La. 447, 29 So. 241.